

TOWN OF ELLINGTON INLAND WETLANDS AND WATERCOURSES REGULATIONS

TABLE OF CONTENTS

I. TITLE AND AUTHORITY -----	2
II. DEFINITIONS -----	3
III. INVENTORY OF REGULATED AREAS -----	8
IV. PERMITTED AND NON-REGULATED USES-----	8
V. ACTIVITIES REGULATED BY THE STATE -----	10
VI. REGULATED ACTIVITIES TO BE LICENSED -----	11
VII. APPLICATION REQUIREMENTS-----	12
VIII. APPLICATION PROCEDURES -----	19
VIX. PUBLIC HEARINGS-----	20
X. CONSIDERATIONS FOR DECISION -----	21
XI. DECISION PROCESS AND PERMIT-----	23
XII. BOND AND INSURANCE-----	25
XIII. ENFORCEMENT -----	26
XIV. AMENDMENTS -----	27
XV. APPEALS-----	28
XVI. CONFLICT AND SEVERANCE-----	28
XVII. OTHER PERMITS -----	29
XVIII. EFFECTIVE DATE OF REGULATIONS -----	29
APPENDIX A (Fee Schedule) -----	30
APPENDIX B (Application Form)	
APPENDIX C (State DEEP Form)	
APPENDIX D (Permitted & Non-Regulated Use Requirements)	

Revisions through December 16, 2013, Effective January 15, 2014.

NOTE: These regulations are annotated with paragraph footnotes relating to amendments. The footnotes appear for illustrative purposes and are not officially regulations in and of themselves.

SECTION I TITLE AND AUTHORITY

- 1.1** The inland wetlands and watercourses of the State of Connecticut are an indispensable and irreplaceable but fragile natural resource with which the citizens of the state have been endowed. The wetlands and watercourses are an interrelated web of nature essential to an adequate supply of surface and underground water; to hydrological stability and control of flooding and erosion; to the recharging and purification of groundwater; and to the existence of many forms of animal, aquatic and plant life. Many inland wetlands and watercourses have been destroyed or are in danger of destruction because of unregulated use by reason of the deposition, filling or removal of material, the diversion or obstruction of water flow, the erection of structures and other uses, all of which have despoiled, polluted and eliminated wetlands and watercourses. Such unregulated activity has had, and will continue to have, a significant, adverse impact on the environment and ecology of the state of Connecticut and has and will continue to imperil the quality of the environment thus adversely affecting the ecological, scenic, historic and recreational values and benefits of the state for its citizens now and forever more. The preservation and protection of the wetlands and watercourses from random, unnecessary, undesirable and unregulated uses, disturbance or destruction is in the public interest and is essential to the health, welfare and safety of the citizens of the state. It is, therefore, the purpose of these regulations to protect the citizens of the state by making provisions for the protection, preservation, maintenance and use of the inland wetlands and watercourses by minimizing their disturbance and pollution; maintaining and improving water quality in accordance with the highest standards set by federal, state or local authority; preventing damage from erosion, turbidity or siltation; preventing loss of fish and other beneficial aquatic organisms, wildlife and vegetation and the destruction of the natural habitats thereof; deterring and inhibiting the danger of flood and pollution; protecting the quality of wetlands and watercourses for their conservation, economic, aesthetic, recreational and other public and private uses and values; and protecting the state's potable fresh water supplies from the dangers of drought, overdraft, pollution, misuse and mismanagement by providing an orderly process to balance the need for the economic growth of the state and the use of its land with the need to protect its environment and ecology in order to forever guarantee to the people of the state, the safety of such natural resources for their benefit and enjoyment and for the benefit and enjoyment of generations yet unborn.
- 1.2** These regulations shall be known as the "Town of Ellington Inland Wetlands and Watercourses Regulations."
- 1.3** The Inland Wetland and Watercourses Agency of the Town of Ellington was established pursuant to an ordinance adopted May 1, 1974. The Agency shall implement the purposes and provisions of the Inland Wetlands and Watercourses Act in the Town of Ellington
- 1.4** These regulations have been adopted and may be amended, from time to time, in accordance with the provisions of the Inland Wetlands and Watercourses Act and these regulations.
- 1.5** The Agency or its agent shall enforce all provisions of these regulations and shall issue, issue with terms, conditions, limitations or modifications, and deny permits for all regulated activities proposed to be located within regulated areas in the Town of Ellington pursuant to Sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes, as amended. The Agency or its agent shall also review proposed permitted and non-regulated uses in order to determine that, based on the information provided; the proposed permitted or non-regulated use does not include regulated activities requiring approval by the Agency or its agent.

- 1.6** The Agency's duly appointed agent shall have the authority to approve certain regulated activities proposed within regulated upland review areas, and as provided for in Section 6 of these regulations and CGS 22a-42a (c) (2).

SECTION II DEFINITIONS

2.1 As used in these regulations:

- a.** "Act" means the Inland Wetland and Watercourses Act, Sections 22a-36 through 22a-45, inclusive, of the Connecticut General Statutes, as amended.
- b.** "Administrative Permit" is a permit issued by the Agency's agent pursuant to Section 6 of these regulations, for certain limited activities to be located within the regulated upland review area.
- c.** "Agency" means the Inland Wetlands and Watercourses Agency of the Town of Ellington
- d.** "Agency Permit" is a permit issued by the Agency, as opposed to an administrative permit issued by its agent.
- e.** "Best Management Practices" ("BMPs") means a practice, procedure, activity, structure or facility designed to prevent or minimize pollution or other environmental damage or to maintain or enhance existing environmental quality. Such management practices include, but are not limited to: erosion and sedimentation controls, restrictions on land use or development, construction setbacks from wetlands or watercourses, proper disposal of waste materials, procedures for equipment maintenance to prevent fuel spillage, construction methods to prevent flooding or disturbance of wetlands and watercourses, procedures for maintaining continuous stream flows, confining construction that must take place in watercourses to times when water flows are low and fish and wildlife will not be adversely affected.
- f.** "Bogs" are watercourses distinguished by evergreen trees and shrubs underlain by peat deposits, poor or very poor drainage, and highly acidic conditions.
- g.** "Clean Fill" means uncontaminated natural soil, rock, concrete or asphalt which is inert and poses no threat, present or future, of pollution to surface or groundwater. Clean fill excludes demolition or construction waste or debris such as but not limited to, stumps, trees, solid waste, bulky waste, and refuse (ref. RCSA 22a-209).
- h.** "Clear-cutting" is the harvest of timber products in a fashion which removes all species of trees down to a 2" diameter at breast height.
- i.** "Commission member" means a member of the Inland Wetlands and Watercourses Agency of the Town of Ellington.
- j.** "Commissioner of Energy and Environmental Protection" means the Commissioner of the State of Connecticut Department of Energy and Environmental Protection (DEEP).
- k.** "Conservation Easement" is a restrictive covenant running from the property owner to the Town of Ellington, which restrictive covenant shall attach to and run

with the land and be binding upon the property owner and his heirs, successors and assigns. The conservation easement shall be a legal agreement between the property owner and the Town, wherein the property owner agrees to perpetually preserve, protect, conserve and maintain in a natural scenic and open condition, all land contained within the legal description encompassing the conservation easement. By natural, scenic and open conditions it is hereby meant that the land must remain undisturbed (i.e. no construction; no filling or excavation; no other activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation or the preservation of wildlife). A fee simple interest in the land contained within the conservation easement shall remain with the owner of the land subject to the conservation easement in favor of the Town. Conservation easements may with the Agencies approval and in its sole discretion, also run to a responsible agency or non-profit land trust.

- l.** “Construction Limits” are the limits of any activity, including but not limited to, clearing, land grading, site access, stockpile areas and other such uses, associated with a regulated activity, non-regulated activity, or permitted activity proposed to be located within a regulated area. Also known as “limits of development,” “project limits,” and “limits of activity.”
- m.** “Continual Flow” is flow of water which persists for an extended period of time, but that may be interrupted for short periods during periods of drought or during low flow periods of the annual hydrological cycle, June through September, but it recurs in prolonged succession.
- n.** "Deposit" includes, but shall not be limited to fill, grade, dump, place, discharge or emit.
- o.** "Discharge" means emission of any water, substance, or material into waters of the State, whether or not such substance causes pollution.
- p.** "Disturbing the natural and indigenous character of the land" means to alter the inland wetlands and watercourses by reason of removal or deposition of material, clear-cutting, alteration or obstruction of water flow, or will result in the pollution of the wetlands or watercourse.
- q.** “Erodable Soils” are any soils classified by the USDA Soil Conservation Service as being moderately or highly erodable.
- r.** “Essential to the farming operation” means that the proposed activity is necessary and indispensable to sustain farming activities on the farm.
- s.** "Farming" shall be consistent with the definition as noted in Section 1-1(q) of the Connecticut General Statutes, as may be amended.
- t.** “Feasible” means able to be constructed or implemented consistent with sound engineering principles.
- u.** “Functional and Qualitative Assessment” is an analysis describing in detail, the functions and values of the affected and potentially affected regulated areas, inland wetlands and watercourses, and generally following the standards and

format of the US Army Corp of Engineers, State DEEP or other Commission approved method.

- v.** "Gardening" means the tilling of soil, planting, cultivating and harvesting of plants.
- w.** "Grazing" means using any tract of land to feed or supply farm animals with grass or pasture, to tend farm animals, or feeding or growing silage and herbage.
- x.** "Harvesting of Crops" means gathering plants or animals or plant or animal products which have been grown to be harvested.
- y.** "Intermittent Watercourse" is a watercourse with a defined permanent channel and bank and at least two of the following characteristics; evidence of scour or deposits of recent alluvium or detritus; the presence of standing or flowing water for a duration longer than a particular storm incident; or the presence of hydrophytic vegetation.
- z.** "License" see permit.
- aa.** "Marshes" are watercourses that are distinguished by the absence of trees and shrubs and the dominance of soft-stemmed herbaceous plants. The water table in marshes is at or above the ground surface throughout the year and areas of open water six inches or more in depth are common, but seasonal water table fluctuations are encountered.
- bb.** "Material" means any substance, solid or liquid, organic or inorganic, including but not limited to: soil, sediment, aggregate, land, gravel, clay, bog, mud, debris, sand, refuse or waste.
- cc.** "Municipality" means the Town of Ellington, Tolland County, Connecticut.
- dd.** "Nurseries" means land used for propagating trees, shrubs or other plans for transplanting, sale or for use as stock for grafting.
- ee.** "Permit" means the whole or any part of any license, certificate or approval or similar form of permission which may be required of any person by the provisions of these regulations under the authority of the Inland Wetlands Agency or its agent.
- ff.** "Permittee" means the person to whom a permit has been issued.
- gg.** "Person" means any person, firm, partnership, association, corporation, limited liability company, company, organization or legal entity of any kind, including municipal corporations, governmental agencies or subdivisions thereof.
- hh.** "Pollution" means harmful thermal effect or the contamination or rendering unclean or impure of any waters of the state by reason of any waste or other materials discharged or deposited therein by any public or private sewer or otherwise so as directly or indirectly to come in contact with any waters. This includes, but is not limited to, erosion and sedimentation resulting from any filling, land clearing or excavation activity.

- ii.** “Prudent” means economically and otherwise reasonable in light of the social benefits to be derived from the proposed regulated activity provided cost may be considered in deciding what is prudent and further provided, a mere showing of expense will not necessarily mean an alternative is imprudent.
- jj.** “Regulated Activity” means any operation within or use of a wetland or watercourse involving clear cutting, removal of material, deposit of material, or any obstruction, construction, alteration or pollution, of such a wetland or watercourse, but shall not include the specified activities in Section 22a-40 of the Connecticut General Statutes and the specified activities in Section 4 of these regulations, subject to the conditions therein, Furthermore:
 - 1.** Any clearing, grubbing, filling, grading, paving, excavating, constructing, depositing or removal of material, or discharging of stormwater on land within one hundred (100) feet measured horizontally from the boundary of a wetlands or watercourse area or two-hundred and fifty (250) feet measured horizontally from the boundary of a wetlands or watercourse area located within an area designated as a watershed by a Water Company is a regulated activity.
 - 2.** The Commission may rule that any activity that alters the existing rate, or quality of any stormwater discharge conveyed to a regulated area or upland review area, is likely to impact or affect wetlands or watercourses and is a regulated activity.
 - 3.** The Commission may rule that any other activity located within the regulated area, or in any other non-wetland or non-watercourse area, is likely to impact or affect wetlands or watercourses and is a regulated activity.
- kk.** "Regulated area" means any inland wetland, watercourse or upland review area as defined in these regulations.
- ll.** "Remove" includes, but shall not be limited to, drain, excavate, mine, dig, dredge, suck, grub, bulldoze, dragline or blast.
- mm.** "Rendering unclean or impure" means any alteration of the physical, chemical or biological properties of any of the waters of the state, including, but not limited to, change in odor, color, turbidity or taste.
- nn.** "Significant activity" means any activity, including, but not limited to, the following activities which may have a major effect on the area for which an application has been filed or on another part of the inland wetland or watercourse system:
 - 1.** Any activity involving a deposition or removal of material which will or may have a substantial effect on the regulated area or on another part of the inland wetland or watercourse system, or
 - 2.** Any activity which substantially changes the natural channel or may inhibit the natural dynamics of a watercourse system, or
 - 3.** Any activity which substantially diminishes the natural capacity of an inland wetland or watercourse to support aquatic, plant or animal life and

- habitats; prevent flooding, supply water, assimilate waste, facilitate drainage, provide recreation or open space or other functions, or
4. Any activity which is likely to cause or has the potential to cause substantial turbidity, siltation or sedimentation in a wetland or watercourse, or
 5. Any activity which causes a substantial diminution of flow of a natural watercourse, or groundwater levels of the regulated area, or
 6. Any activity which causes or has the potential to cause pollution of a wetland or watercourse, or
 7. Any activity which creates conditions which may adversely affect the health, welfare and safety of any individual or the community, or
 8. Any activity which damages or destroys unique wetland or watercourse areas having demonstrable scientific or educational value.
- oo.** "Significant Slope" a land surface having a slope of 20% or more for a linear distance (cross slope) of fifty (50) feet or more.
- pp.** "Soil Scientist" means an individual duly qualified in accordance with standards set by the federal Office of Personnel Management.
- qq.** "Submerged lands" are those lands which are inundated by water on a seasonal or more frequent basis.
- rr.** "Swamps" are watercourses that are distinguished by the dominance of wetland trees and shrubs.
- ss.** "Town" means the Town of Ellington, Tolland County in the State of Connecticut.
- tt.** "Upland Review Area" means an area within 250 feet of any watercourse or wetland as defined by these regulations in areas designated as a Watershed Area of a Water Company as defined in Section 16-1 of the General Statutes and within 100 feet of all other watercourses or wetlands.
- uu.** "Waste" means sewage or any substance, liquid, gaseous, solid or radioactive, which may pollute or tend to pollute any of the wetlands and watercourses of the Town or State.
- vv.** "Watercourses" means rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs, and all other bodies of water, natural or artificial, vernal or intermittent, public or private, which are contained within, flow through or border upon the Town or any portion thereof, not regulated pursuant to Section 22a-28 through 22a-35, inclusive, of the Connecticut General Statutes, as amended. Intermittent watercourses shall be delineated by a defined permanent channel and bank and the occurrence of two or more of the following characteristics; evidence of scour or deposits of recent alluvium or detritus, the presence of standing or flowing water for a duration longer than a particular storm incident, or the presence of hydrophytic vegetation.

- ww.** "Wetlands" means land, including submerged land not regulated pursuant to section 22a-28 through 22a-35, inclusive, of the Connecticut General Statutes, which consists of any of the soil types designated as poorly drained, very poorly drained, alluvial and flood plain by the National Cooperative Soils Survey, as it may be amended from time to time, of the Natural Resources Conservation Service of the U.S. Department of Agriculture (USDA). Such areas may include filled, graded, or excavated sites which possess an aquic (saturated) soil moisture regime as defined by the USDA Cooperative Soil Survey.

SECTION III INVENTORY OF REGULATED AREAS

- 3.1** The map of regulated areas, entitled "Inland Wetlands and Watercourses Map, Ellington, Connecticut," delineates the general location and boundaries of inland wetlands, the general location of watercourses and the general location of regulated upland review areas. Copies of this map are available for inspection in the office of the Town Planner or Town Clerk.

In all cases, the precise location of regulated areas shall be determined by the actual character of the land, the distribution of regulated soil types, and locations of watercourses. Such determinations shall be made by field inspection and testing conducted by a certified soil scientist where soil classifications are required, or where watercourse determinations are required, by other qualified individuals deemed acceptable to the agency or its agent. The Agency may use aerial photography, remote sensing imagery, resource mapping, soils maps, site inspection observations or other information in determining the location of the boundaries of wetlands and watercourses.

- 3.2** Any person may petition the agency for an amendment to the map. All petitions for a map change shall be submitted in writing and shall include all relevant facts and circumstances which support the change. The petitioner shall bear the burden of proof regarding the proposed map amendment. Such proof shall be in accordance with Section 14 of these regulations.
- 3.3** The Inland Wetland and Watercourses Agency or its designated agent(s) shall monitor and maintain general surveillance of all regulated areas and a current inventory of regulated areas within the town.

SECTION IV PERMITTED & NONREGULATED USES

- 4.1** The following operations and uses shall be permitted within regulated areas as of right:
- a.** Grazing, farming, nurseries, gardening and harvesting of crops and farm ponds of three acres or less essential to the farming operation, and activities conducted by, or under the authority of the Department of Energy and Environmental Protection for the purposes of wetland and watercourse restoration or enhancement or mosquito control.

The provisions of this section shall not be construed to include road construction or the erection of buildings not directly related to the farming operation,

relocation of watercourses with continual flow, filling or reclamation of wetlands or watercourses with continual flow, clear cutting of timber except for the expansion of agricultural crop land, or the mining of top soil, peat, sand, gravel or similar material from wetlands or watercourses for the purposes of sale;

- b.** A residential home for which a building permit has been issued or on a subdivision lot provided the permit has been issued or the subdivision approved by the Ellington Planning and Zoning Commission as of July 1, 1974, and further provided no residential home shall be permitted as of right pursuant to this subdivision unless the building permit was obtained on or before July 1, 1987.

The applicant shall document this right by providing a certified copy of the building permit and approved site plan showing proposed and existing topographic contours, house and well locations, septic systems, driveways, approval dates or other information necessary to document his or her right hereunder;

- c.** Boat anchorage or mooring, not to include dredging or dock construction;
- d.** Uses incidental to the enjoyment or maintenance of residential property, such property defined as equal to or smaller than the largest minimum residential lot site permitted anywhere in the municipality. Such incidental uses shall include maintenance of existing structures and landscaping, but shall not include removal or deposition of significant amounts of material from or onto a wetland or watercourse, or diversion or alteration of a watercourse.
- e.** Construction and operation, by water companies as defined by Section 16-1 or by municipal water supply systems as provided for in Chapter 102 of the Connecticut General Statutes, of dams, reservoirs and other facilities necessary to the impounding, storage and withdrawal of water in connection with public water supplies except as provided in Sections 22a-401 and 22a-403 of the General Statutes.
- f.** Maintenance relating to any drainage pipe which existed before the effective date of any municipal regulations adopted pursuant to section 22a-42a or July 1, 1974, whichever is earlier, provided such pipe is on property which is zoned as residential but which does not contain hydrophytic vegetation. For purposes of the subdivision "maintenance" means the removal of accumulated leaves, soil, and other debris whether by hand or machine, while the pipe remains in place; and
- g.** Withdrawals of water for fire emergency purposes.

(Section 4.1g added 12/12/11, Eff.1/15/12, Pursuant to 2011 Legislation and Regulations Advisory –DEEP.)

- 4.2** The following operations and uses shall be permitted as nonregulated uses within regulated areas, provided they do not disturb the natural and indigenous character of a wetland or watercourse by removal or deposition of material, alteration or obstruction of water flow or pollution of the wetland or watercourse:

- a.** Conservation of soil, vegetation, water, fish, shell-fish, and wildlife;

- b.** Outdoor recreation including play and sporting areas, golf courses, field trails, nature study, hiking, horseback riding, swimming, skin diving, camping, boating, water skiing, trapping, hunting, fishing and shell-fishing where otherwise legally permitted and regulated; and
- c.** The installation of a dry hydrant by or under the authority of a municipal fire department, provided such dry hydrant is only used for firefighting purposes and there is no alternative access to a public water supply. For purposes of this section, “dry hydrant” means a non-pressurized pipe system that: (A) is readily accessible to fire department apparatus from a proximate public road, (B) provides for the withdrawal of water by suction to such fire department apparatus, and (C) is permanently installed into an existing lake, pond or stream that is a dependable source of water.

(Section 4.2c added 12/12/11, Eff.1/15/12, Pursuant to 2011 Legislation and Regulations Advisory –DEEP.)

- 4.3** Any dredging or any erection, placement, retention or maintenance of any structure, fill, obstruction or encroachment, or any work incidental to such activities, conducted by a State Agency, which activity is regulated under sections 22a-28 to 22a-35 inclusive, or sections 22a-359b to 22a-363f inclusive, shall not require any permit or approval under sections 22a-36 to 22a-45 inclusive.
- 4.4** All activities in regulated areas involving filling, excavation, dredging, clear-cutting, clearing grading and excavation or any other alteration or use of a regulated area not specifically permitted by this section and otherwise defined as a regulated activity by these regulations shall require a permit from the Agency or its agent in accordance with Section 6 of these regulations.
- 4.5** To carry out the purposes of this section, any person proposing to carry out a permitted or nonregulated operation or use within a regulated area shall, prior to commencement of such operation or use, notify the Agency or its agent on a form provided by it, and provide the Agency or its agent with sufficient information to enable it to properly determine that the proposed operation and use is a permitted or nonregulated use within a regulated area.

The Agency or its designated agent shall rule that the proposed operation or use or portion of it is a permitted or a nonregulated use or operation or that a permit is required. Such ruling shall be in writing and shall be made no later than the next regularly scheduled meeting of the Agency following the meeting at which the request was received. The Town Planner or his or her designee, acting as the designated agent for the Agency, may make such ruling on behalf of the Agency at any time.

SECTION V ACTIVITIES REGULATED BY THE STATE

- 5.1** The Commissioner of Energy and Environmental Protection shall have exclusive jurisdiction over regulated activities in or affecting wetlands or watercourses, undertaken by any department, agency or instrumentality of the State of Connecticut, except any local or regional board of education pursuant to sections 22a-22a-45a of the Connecticut General Statutes.

- 5.2** The Commissioner of Energy and Environmental Protection shall have exclusive jurisdiction over tidal wetlands designated and regulated pursuant to Sections 22a-28 through 22a-35 of the General Statutes, as amended.
- 5.3** The Commissioner of Energy and Environmental Protection shall have exclusive jurisdiction over activities authorized under a dam repair or removal order issued by the Commissioner of Energy and Environmental Protection under section 22a-402 of the Connecticut General Statutes or a permit issued by the Commissioner of Energy and Environmental Protection under sections 22a-403 of the Connecticut General Statutes. Any person receiving such dam repair or removal order or permit shall not be required to obtain a permit from a municipal wetland agency for any action necessary to comply with said dam order or to carry out the activities authorized by said permit.
- 5.4** The Commissioner of Energy and Environmental Protection shall have exclusive jurisdiction over the discharge of fill or dredged materials into the wetlands and watercourses of the state pursuant to Section 401 of the Federal Clean Water Act, as amended, for activities regulated by the U.S. Army Corps of Engineers under Section 404 of the Federal Clean Water Act.

SECTION VI REGULATED ACTIVITIES TO BE LICENSED

- 6.1** No person shall conduct or maintain a regulated activity without first obtaining a permit for such activity from the Inland Wetland and Watercourses Agency of the Town of Ellington or its agent.
- 6.2** The Agency or its agent shall regulate any operation or use within any upland review area, wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution, within such wetlands, watercourses and upland review areas, and any other regulated activity, unless such operation or use is permitted or non-regulated pursuant to Section 4 of these regulations.
- 6.3** Any person found to be conducting or maintaining a regulated activity without the prior authorization of the Town of Ellington Inland Wetland and Watercourses Agency or its agent, or violating any other provision of these regulations, shall be subject to the enforcement proceedings and penalties prescribed in Section 13 of these regulations and any other remedies as provided by law.
- 6.4** The Agency's duly authorized agent shall have the authority to approve administrative permits for decks, patios, detached accessory structures, grading, fill, excavation and clearing on residentially zoned land or after receipt by the Agency, the Agency may delegate to its Agent the authority to approve or extend an activity on commercially or industrially zoned land where all activity related to such uses will be located a minimum of twenty-five (25) feet from any wetland or watercourse. Said improvements shall not be approved by the agent unless the agent finds that the conduct of such activity would result in no greater than a minimal impact on any wetlands or watercourse, and provided such agent has completed the comprehensive training program developed by the Commissioner of Energy and Environmental Protection pursuant to section 22a-39 of the Connecticut General Statutes. *(Amended 11/20/06, Effective 12/08/06, to allow Agent permits for some regulated activity on commercial/industrial zoned property)*

Requests for such approval shall be made on a form provided by the Agency and shall contain the information listed under Section 7 of these regulations and any other information the Agency or its agent may reasonably require. Notwithstanding the provisions for receipt and processing applications prescribed in these regulations, such agent may approve or extend such an activity at any time.

In evaluating an application for an administrative permit pursuant to this section, the agent shall consider the decision criteria described in section 10 of these regulations as applicable. In addition, the agent shall have the right at any time, to forward the request to the Agency for its review. The Agency, upon reviewing such request, may determine that an Agency permit is required.

- 6.5** Any person receiving an administrative permit shall, within ten (10) days of the date of such approval, publish, at the applicant's expense, notice of the action in a newspaper having a general circulation in the town wherein the activity is located. Any person may appeal the agent's decision to the Agency within fifteen (15) days after the publication date of the notice of action and the Agency shall consider such appeal at its next regularly scheduled meeting, provided such meeting is no earlier than three business days after receipt by the agency or its agent of such appeal. Any person may appear and be heard at the meeting held by the Agency to consider the subject appeal. The Agency shall, at its discretion, sustain, alter, or reject the decision of its agent or require an application for a permit to be considered by the Agency in accordance with the requirements of these regulations.

SECTION VII APPLICATION REQUIREMENTS

- 7.1** Any person wishing to undertake a regulated activity, to renew or amend an existing permit or requesting review regarding notification to the Agency of a proposed non-regulated or permitted use, shall apply for a permit or review on a form entitled "Town of Ellington Inland Wetlands and Watercourses Agency - Application for Permit." A complete initial application shall include fifteen copies of the information listed in Section 7.4. All applicants who are not owners of the subject property, shall submit the written consent of the property owner or owners to the Agency at the time of initial application.

By submitting the application, the applicant;

- a.** is expressly authorizing access to the subject site for the Agency and its staff;
- b.** is certifying that the information provided with the application is true and accurate to the best of their knowledge;
- c.** is certifying that they are aware of and understand the application requirements and regulations, and;
- d.** acknowledges that any permit issued on the basis of inaccurate, misleading or faulty information may be deemed void by the Agency.

- 7.2** No application shall be deemed sufficient unless it shall be in such form and contain such information as the Agency or its agent deems necessary in order to determine compliance with applicable requirements of these regulations. The Agency shall inform the applicant

in writing of any request for additional information, data, studies or other support documentation beyond that required in section 7.4 herein.

7.3 If an application to the Town of Ellington Planning and Zoning Commission for subdivision or resubdivision involves land containing a wetland or watercourse, the applicant shall, in accordance with CGS 8-3(g), 8-3c or 8-26 as applicable, submit an application for a permit to the agency in accordance with this section, no later than the day the application is filed with such Planning and Zoning Commission.

7.4 All initial applications and notifications shall include the following information. Submission of these items shall constitute a complete application sufficient for receipt and initiation of the formal application review process. Sufficiency for purposes of receipt shall not be construed to mean that an initial application is sufficient with respect to compliance with all applicable standards and decision criteria, although the Agency in its sole discretion may after review, deem the initial application to be sufficient in regards to compliance with all applicable standards and decision criteria. Subsequent to the initial submittal, receipt and review of a complete initial application, the Agency, upon its review of the initial submittal and in order to properly evaluate the proposal, may require additional technical or other support documentation, as described in section 7.5 herein. In addition, the Agency or its agent may waive, in whole or in part, any of the requirements of sections 7.4 and 7.5, if they determine that such information will not assist them in their evaluation of the proposed activity.

Requirements for Initial Agency and Administrative Permit Applications

- a.** A complete application form entitled “Town of Ellington Inland Wetland and Watercourses Agency Application.” These forms are available in the offices of the Town Planner and in appendix B of these regulations.
- b.** The required fee per the fee schedule listed in appendix A of these regulations.
- c.** A list of abutting parcels, including parcels across any streets (based on a projection of the subject parcel property lines), the owners of such parcels as of the date of application submittal according to the Ellington land evidence records, parcel APN’s per the assessor’s records, and the mailing addresses for said owners, according to the latest records available in the Ellington Assessor’s Office.
- d.** A complete State DEEP Inland Wetland and Watercourses Activity Reporting Form, including all necessary attachments. This form and the required attachments are available in the office of the Town Planner.
- e.** A written and signed certification in regards to the following;
 - 1.** Whether or not any portion of the property on which the regulated activity is proposed is located within 500 feet of an adjoining town;
 - 2.** Whether or not a significant portion of the traffic to the completed project will use streets within an adjoining town to exit or enter the site;
 - 3.** Whether or not sewer or water drainage from the project will flow through and impact the sewer or water drainage system of an adjoining town; and/or

4. Whether water run-off from the improved site will impact streets or other municipal or private property within an adjoining town.
- f. A written and signed certification whether or not the proposed activity will affect land located within the mapped watershed of a public water supply company.
- g. A detailed narrative describing the proposed activity and its purpose. Such narrative shall include at a minimum, the following:
 1. The amount, in square feet and linear feet (as applicable) of regulated upland review area affected, of inland wetlands affected, and of watercourses affected by the proposed activity. These areas should be described in terms of the overall (aggregate) area affected, as well as with regard to permanent versus temporary impacts.
 2. The general characteristics of the regulated areas being affected by the proposal in terms of land cover, vegetation, soil types, slope, and relationship to other regulated areas on and off the project site.
 3. For all uses, the purpose and a description of the proposed activity and proposed erosion and sedimentation controls and other best management practices and mitigation measures which may be considered as a condition of issuing a permit for the proposed regulated activity including, but not limited to, measures to (1) prevent or minimize pollution or other environmental damage, (2) maintain or enhance existing environmental quality, or (3) in the following order of priority, restore, enhance and create productive wetland or watercourse resources.
 4. For commercial and industrial uses, a general description of the business operations, including but not limited to, the type of business, production and manufacturing procedures, handling and disposition of any process wastewaters, cooling waters, and/or stormwater, types of materials used and stored on site, spill contingency plans, septic disposal (unless tied to sewers), waste/refuse storage, handling and disposal, and similar operations.
 5. For commercial and industrial uses, a list of current State of Connecticut and Federal environmental and land use permits issued for the facility. Such list shall also include a disclosure of any enforcement action taken by the State DEEP regarding the facility, either current or within the previous five years from the date of the subject application, including any consent orders, fines, penalties and/or resolution of such enforcement actions.
 6. A construction or project narrative describing items such as the method of construction, duration of construction activity, methods to control stormwater and limit erosion before, during and following construction, type of equipment to be used, type and location of access to the regulated area, storage and disposal of excess materials or stockpiles, type and composition of any fill material, removal and disposition of trees and stumps, measures to dewater, divert flows, and similar activities.

7. A description of any changes to water velocity, volume or course, the anticipated impacts of these changes, and measures to mitigate those impacts.
 8. A list of any other local, State of Connecticut or U.S. environmental or land use approvals required for the proposed regulated activity such as but not limited to, DEEP Construction or Commercial Stormwater Permit Registration, Army Corp permits, ConnDOT, STC, and waste water or process water discharge permits.
 9. Where stormwater systems are proposed, detailed storm drainage calculations, construction details and other support documentation, certified by a Professional Engineer licensed to practice in the State of Connecticut.
 10. If the area to be disturbed is ½ acre or more in area, a detailed erosion control plan and narrative, in compliance with the latest State DEEP Guidelines for Soil Erosion and Sediment Control.
 11. A disclosure listing any previous Ellington inland wetland permit applications and Ellington wetland enforcement actions regarding the subject parcel(s).
 12. A graphic and textual description of all alternatives to the proposed regulated activity considered which would cause less or no environmental impact to wetlands or watercourses, and a general discussion of each, including the reason or reasons for choosing the proposed alternative as set forth in the application. This requirement relates to the evaluation of the initial application only, and shall not be construed as a conclusion by the Agency or its agent that the proposed activity is “significant.” The determination of significance shall be made by the Agency or its agent after review of the initial application, and if the proposed regulated activity or any component of that activity is deemed “significant,” the applicant may be required by the Agency or its agent to submit a more detailed analysis of alternatives, in order to allow the Agency to make the necessary findings with respect to prudent and feasible alternatives.
- h. A Site Plan as follows:**
1. Administrative Permits

A site plan, drawn to scale (typically 1:20 or 1:40) and meeting the standards of a “class D” survey, depicting the parcel boundaries, existing topography at 2 foot contours, location of wetlands or watercourses on or within 100 feet or within 250 feet of the proposed activity, upland review area limits, limit of the 100 year flood boundary, existing structures, driveways, parking areas, utilities, easements, septic fields, potable water supply, ground cover, drainage rights, public watershed boundary, and a title block with applicant’s name, owner’s name, parcel street address, APN, plan date and scale.

The site plan shall also depict in detail, all proposed regulated activities, including but not limited to, construction limits, site access, structures, utilities, clearing, fill, excavation, grading, material, equipment and stockpile locations, erosion and stormwater controls, final stabilization and construction details.

2. Agency Permits

Agency permit applications shall include a site plan depicting at least the information required for an administrative permit site plan, but shall also meet the following additional minimum standards;

- a.** The plan shall meet A-2 standards for accuracy.
- b.** The plan shall depict the location of regulated wetland soils and watercourses, and include the certification by the soil scientist who field located such regulated areas.
- c.** The plan shall include a certification by a licensed professional engineer regarding any grading or construction proposed.
- d.** The plan shall show the location of abutting properties, including across any streets, and the owners and APN's of said properties.
- e.** The plan shall include a location map showing the subject parcel in relationship to parcels, streets, wetlands, watercourses, dedicated open space and conservation easement locations, and potable water supply watershed boundaries within 1,000 feet of the subject parcel.
- f.** The plan shall show any proposed mitigation areas and related details, if such mitigation is proposed or required to comply with applicable standards.

7.5 If the Agency determines, based upon its review of the initial submittal that either the proposed activity involves a significant activity as determined by the Agency, or additional technical or other information is necessary in order to properly and fully evaluate the proposed activity, any or all of the additional information listed below, may be required. Requests for approval of significant activities shall only be approved by the Agency.

- a.** Engineering reports and analyses and additional drawings to fully describe the proposed project and any filling, excavation, drainage or hydraulic modifications to watercourses or watershed areas;
- b.** Mapping of all soil types consistent with the categories established by the National Cooperative Soil Survey of the U.S. Soil Conservation Service;
- c.** A functional and qualitative analysis, describing the ecological communities and functions of the wetlands, watercourses and upland review areas affected by the proposed regulated activity and the effects of the proposed regulated activities on these communities and wetland functions. Such analysis shall be prepared by a professional having demonstrated competence by virtue of

relevant education and experience in the fields of wetland ecology, plant biology, hydrology and related areas;

- d.** Description of how each alternative considered by the applicant would change, diminish, or enhance the ecological communities and functions of the wetlands or watercourses involved in the application; and a description of why each alternative not chosen which would cause less or no environmental impact to wetlands or watercourses was deemed neither prudent nor feasible;
- e.** Analysis of chemical or physical characteristics of any fill material;
- f.** Existing and anticipated alkalinity, salinity, Ph, nitrate, phosphate, turbidity, bacteria levels, temperature, dissolved oxygen levels, and similar attributes of any affected watercourses or water bodies directly affected by the proposed activity;
- g.** State DEEP groundwater and surface water quality designations for existing water resources on and within 1,000 feet of the subject activity, as well as the State DEEP's target classification for these same areas;
- h.** An indication whether or not any endangered, threatened or species of special concern (plant and animal) are located within 1,000 feet of the subject activity, but limited to species that are wetland dependent, and based on the most recent State DEEP Natural Diversity Database mapping.
- i.** Location of any State designated fisheries within 1,000 feet of the subject activity.
- j.** Measures that would mitigate the impact of the proposed activity. Such measures include, but are not limited to, plans or actions which avoid destruction or diminution of wetland or watercourse functions, recreational uses and natural habitats, which prevent flooding, degradation of water quality, erosion and sedimentation and obstruction of drainage, or which otherwise safeguard water resources.

7.6 Any application to extend the expiration date of a previously issued permit shall be filed with the Agency not later than thirty-five (35) days prior to the expiration date for the permit in accordance with Subsections 8.4 through 8.8 of these regulations. Any application for renewal or extension shall be made in accordance with this Section provided:

- a.** The application may incorporate by reference the documentation and record of the original application;
- b.** The application shall state the reason why the authorized activities were not initiated or completed within the time specified in the permit;
- c.** The application shall describe any changes in facts or circumstances involved with or affecting wetlands or watercourses or the property for which the permit was issued;
- d.** The Agency may accept an untimely application to extend the expiration date of a permit if the authorized activity is ongoing and allow the continuation of work

beyond the expiration date if in its judgment, the permit is likely to be extended and the public interest or environment will be best served by not interrupting the activity. The application shall describe the extent of work completed at the time of filing and the schedule for completing the activities authorized in the permit.

- e. The Agency shall evaluate the application pursuant to Section 10 of these regulations and grant the application as filed, grant it with any terms or limitations, or deny it without prejudice with respect to the filing of a new permit application.
- f. Any application to renew a permit shall be granted upon request of the permit holder, unless the Agency finds that there has been a substantial change in circumstances which requires a new permit application or an enforcement action has been undertaken with regard to the regulated activity for which the permit was issued, provided no permit shall be valid for more than ten years, and further provided that any permit issued prior to July 1, 2011 that did not expire prior to May 9, 2011 shall be valid for no more than fourteen years.

(Section 7.6f amended 12/12/11, Eff.1/15/12, Pursuant to 2011 Legislation and Regulations Advisory –DEEP.)

7.7 For any permit application involving property subject to a conservation restriction or preservation restriction, the following shall apply:

- a. For purposes of this section, “conservation restriction” means a limitation, whether or not stated in the form of a restriction, easement, covenant or conditions, in any deed, will or other instrument executed by or on behalf of the owner of the land described therein, including, but not limited to, the state or any political subdivision of the state, or in any order of taking such land whose purpose is to retain land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming, forest or open space use.
- b. For purposes of this section, “preservation restriction” means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of land, including, but not limited to, the state or any political subdivision of the state, or in any order of taking of such land whose purpose is to preserve historically significant structures or sites.
- c. No person shall file a permit application, other than for interior work in an existing building or for exterior work on an existing building that does not expand or alter the footprint of such existing building, relating to property that is subject to a conservation restriction or a preservation restriction unless the applicant provides proof that the applicant has provided written notice of such application, by certified mail, return receipt requested, to the party holding such restriction, including, but not limited to, any state agency that holds such restriction, not later than sixty days prior to the filing of the permit application.

- d.** In lieu of such notice pursuant to subsection 7.7c, the applicant may submit a letter from the holder of such restriction or from the holder's authorized agent, verifying that the application is in compliance with the terms of the restriction.

(Section 7.7(a-d) added 2/14/11, Eff. 3/15/11, Pursuant to 2010 Legislation and Regulations Advisory –DEP.)

SECTION VIII APPLICATION PROCEDURES

- 8.1** All applications shall be filed with the Planning Department, as the designated office of the Commission, in writing and when requested by the Commission or its Agent in electronic format. *(Amended 12/10/12, Eff. 1/1/2013, Pursuant to Jan. 2012 CT Practice Book Changes)*
- 8.2** Where any portion of the wetland or watercourse on which the regulated activity is proposed is located within 500 feet of the boundary of Vernon, East Windsor, South Windsor, Enfield, Somers, Willington, Stafford, or Tolland, the applicant shall give written notice of the proposed activity, certified mail return receipt requested, to the adjacent municipal wetland agency on the same day of filing an inland wetland permit application with the Ellington Inland Wetland and Watercourses Agency. Documentation of such notice shall be provided to the Ellington Inland Wetland Agency.
- 8.3** When an application is filed to conduct or cause to be conducted a regulated activity upon an inland wetland or watercourse, any portion of which is within the watershed of a water company as defined in Section 25-32a of the General Statutes, the applicant shall provide written notice of the application to the water company and the Commissioner of Public Health in a format prescribed by said commissioner, provided such water company or said commissioner has filed a map showing the boundaries of the watershed on the Ellington Land Records and with the Agency.

Such notice shall be made by certified mail, return receipt requested, and shall be mailed not later than seven days after the date of the application. The water company and the Commissioner of Public Health, through a representative, may appear and be heard at any hearing on the application. Documentation of such notice shall be provided to the Agency. *(Amended 4/25/07, Effective 5/18/07, to include notice requirement to the Commissioner of Public Health.)*
- 8.4** The Agency shall, in accordance with CGS 8-7b(f) and 22a-42b notify the clerk of any adjoining municipality of the pendency of any application, petition, appeal, request or plan concerning any project on any site in which;
 - a.** Any portion of the property affected by a decision of the Agency, is within 500 feet of the boundary of an adjoining municipality;
 - b.** A significant portion of the traffic to the completed project on the site will use streets within the adjoining municipality to enter or exit the site;
 - c.** A significant portion of the sewer or water drainage from the project site will flow through and significantly impact the sewage or drainage system within the adjoining municipality; or,
 - d.** Water run-off from the improved site will impact streets or other municipal or private property within the adjoining municipality.

Notice of the pendency of such application shall be made by certified mail, return receipt requested, and shall be mailed within seven (7) days of the date of receipt of the application, petition, appeal, request or plan.

- 8.5** The date of receipt of any application, petition, request or appeal shall be the day of the next regularly scheduled meeting of the Agency immediately following the day of submission to the Agency or its agent of such petition, application, request or appeal, or thirty-five days after such submission, whichever is sooner.
- 8.6** At any time during the review period, the applicant shall provide such additional information as the Agency may reasonably require in writing, and when requested by the Commission or its Agent in electronic format. Requests for such additional information shall not stay the time limitations as set forth in these regulations. All documents to be considered by the Agency shall be filed with the Planning Department and available for public inspection no less than fifteen (15) days prior to the date of next scheduled meeting. The Agency may refuse to consider any information that is submitted after the aforementioned fifteen (15) day timeframe if it deems that it, staff or consultants have had insufficient time to review such information or evidence properly before the expiration of the timeline for decision and or any extension of time permitted pursuant to the Connecticut General Statutes. However, nothing in this Section shall prohibit the Agency, in exercise of its discretion, from receiving evidence from any person later than the aforementioned date if adequate time is present to review the nature of the information. *(Amended 12/10/12, Eff. 1/1/2013, Pursuant to Jan. 2012 CT Practice Book Changes & Amended 12/16/13, Eff. 1/15/14, to set a deadline for submission of application documents)*
- 8.7** All applications shall be open for public inspection.
- 8.8** Incomplete applications may be denied, withdrawn or approved with conditions and/or modifications.

SECTION IX PUBLIC HEARINGS

- 9.0** No later than sixty-five (65) days after receipt of an application, the Agency may hold a public hearing on such application. The hearing shall be completed within thirty-five (35) days of its commencement. Action shall be taken on applications within thirty-five (35) days after completion of a public hearing. In the absence of a public hearing, action shall be taken on applications within sixty-five (65) days from the date of receipt of the application. The applicant may consent to one or more extensions up to a maximum of sixty-five (65) days total, or may withdraw such application. Failure of the Agency to act within any time period specified in this subsection, or any extension thereof, shall not be deemed to constitute approval of the application.

The Agency shall not hold a public hearing on an application unless the Agency determines that the proposed activity may have a significant impact on wetlands or watercourses, a petition signed by at least 25 persons who are 18 years of age or older and who reside in the municipality in which the regulated activity is proposed requesting a hearing is filed with the Agency no later than 14 days after the receipt of such application, or the Agency finds that a public hearing regarding such application would be in the public interest.

The Agency may issue a permit without a public hearing, provided no petition provided for in this section is filed with the Agency on or before the 14th day after the date of receipt of the application.

- 9.1** A public hearing shall be held on all applications involving a significant activity. All applications and maps and documents relating thereto shall be open for public inspection. Any person or persons may appear and be heard and may be represented by an agent or an attorney.
- 9.2** Notice of the public hearing shall be published at least twice at intervals of not less than two days, the first not more than fifteen days and not fewer than ten days, and the last not less than two days before the date set for the hearing in a newspaper having a general circulation in each town where the affected wetland and watercourse is located.
- 9.3** Notice of the public hearing shall be mailed to the owner(s) of record of property within 100 feet of the subject parcel(s), by United States Post Office Certificate of Mailing by the applicant no less than 10 days prior to the date of the hearing. Said notice shall be in such form as is prescribed by the Agency. The applicant shall at the time of the hearing present proof of the measures taken to comply with this section. If the applicant has in good faith taken reasonable measures to comply with this section, the failure of any person entitled to notice hereunder to receive such notice shall not invalidate any decision made by the Agency. In all cases, actual notice of a public hearing shall be the equivalent of the receipt of notice as required hereunder.
- 9.4** In the case of any application which is subject to the notification provisions of Section 8.4 of these Regulations, a public hearing shall not be conducted if the clerk of the adjoining municipality(s) has not received notice of the pendency of the application.
- 9.5** The Agency shall notify the applicant of its decision within fifteen (15) days of the date of the decision by certified mail, return receipt requested, and the agency shall cause notice of its order in the issuance or denial of the permit, to be published in a newspaper having general circulation in the town wherein the inland wetland or watercourse lies. In any case in which such notice is not published within such fifteen day period, the applicant may provide for the publication of such notice within ten days thereafter.

SECTION X CONSIDERATIONS FOR DECISION

- 10.1** The Agency may consider the following in making its decision on an application:
 - a.** The application and its supporting documentation;
 - b.** Public comments, evidence and testimony from a public hearing;
 - c.** Reports from other agencies, commissions, and town officials of the Town of Ellington;
 - d.** The Agency may also consider comments on any application from the North Central Conservation District, the State DEEP, North Central Health District, US ACOE, agencies in adjacent municipalities which may be affected by the proposed activity, or other technical agencies or organizations which may undertake additional studies or investigations.

- e. Non-receipt of comments from agencies and commissions listed above shall neither delay nor prejudice the decision of the Agency or its Agent.
- 10.2** Standards and Criteria for Decision. The Agency shall consider all relevant facts and circumstances in making its decision, including but not limited to the following:
- a. The environmental impact of the proposed regulated activity on wetlands or watercourses.
 - b. The applicant's purpose for, and any feasible and prudent alternatives to, the proposed regulated activity, which alternatives would cause less or no environmental impact to wetlands or watercourses;
 - c. The relationship between the short-term and long term impacts of the proposed regulated activity on wetlands or watercourses, and the maintenance and enhancement of long term productivity of such wetlands or watercourses;
 - d. Irreversible and irretrievable loss of wetland or watercourse resources which would be caused by the proposed regulated activity, including the extent to which such activity would foreclose a future ability to protect, enhance or restore such resources, and any mitigation measures which may be considered as a condition of issuing a permit for such activity including, but not limited to, measures to prevent or minimize pollution or other environmental damage, maintain or enhance existing environmental quality, or, in the following order of priority, to restore, enhance and create productive wetland or watercourse resources;
 - e. The character and degree of injury to, or interference with, safety, health, or the reasonable use of property, which would be caused or threatened by the proposed regulated activity,
 - f. Impacts of the proposed regulated activity on wetlands or watercourses outside the area for which the activity is proposed and future activities associated with or reasonably related to, the proposed regulated activity which are made inevitable by the proposed regulated activity and which may have an impact on wetlands or watercourses.
- 10.3** Where the Agency has held a hearing because it has deemed a proposed activity significant, a permit shall not be issued for that activity unless the Agency finds on the basis of the record that a feasible and prudent alternative to that activity does not exist. In making this finding, the Agency shall consider the facts and circumstances set forth in Section 10 of these regulations. This finding and the reasons therefore shall be stated on the record in the decision of the Agency.
- 10.4** In reaching its decision on any application after a public hearing, the Agency shall base its decision on the record of that hearing. Documentary evidence or other material not in the hearing record shall not be considered by the agency in its decision.
- 10.5** For purposes of this section, (1) "wetlands and watercourses" includes aquatic, plant or animal life and habitats in wetlands and watercourses, and (2) "habitats" means areas or environments in which an organism or biological population normally lives or occurs.
- 10.6** A municipal inland wetlands agency shall not deny or condition an application for a regulated activity in an area outside wetlands or watercourses on the basis of an impact or

effect on aquatic, plant or animal life, unless such activity will likely impact or affect the physical characteristics of such wetlands or watercourses.

- 10.7** In the case of an application where the applicant has provided written notice pursuant to subsection 7.7c of these regulations, the holder of the restriction may provide proof to the inland wetlands agency that granting of the permit application will violate the terms of the restriction. Upon a finding that the requested land use violates the terms of such restriction, the inland wetlands agency shall not grant the permit approval. *(Added 2/14/11, Eff. 3/15/11, Pursuant to 2010 Legislation and Regulations Advisory –DEP.)*
- 10.8** In the case of an application where the applicant fails to comply with the provisions of subsections 7.7c or 7.7d of these regulations, (1) the party holding the conservation or preservation restriction, other than a state agency that holds such restriction, may, not later than fifteen days after receipt of actual notice of permit approval, file an appeal with the inland wetlands agency, subject to the rules and regulations of such agency relating to appeals. The inland wetlands agency shall reverse the permit approval upon a finding that the requested land use violates the terms of such restriction; or (2) the state agency that holds such restriction may, not later than thirty days after receipt of actual notice of permit approval, file an appeal with the inland wetlands agency, subject to the rules and regulations of such agency relating to appeals. The inland wetlands agency shall immediately reverse such permit approval if the commissioner of the state agency that holds such restriction certifies that the land use authorized in such permit violates the terms of such conservation or preservation restriction. *(Added 2/14/11, Eff. 3/15/11, Pursuant to 2010 Legislation and Regulations Advisory –DEP.)*
- 10.9** Nothing in subsections 7.7c or 7.7d of these regulations shall be construed to prohibit the filing of a permit application or to require such written notice when the activity that is the subject of such permit application will occur on a portion of property that is not restricted under the terms of such conservation or preservation restriction. *(Added 2/14/11, Eff. 3/15/11, Pursuant to 2010 Legislation and Regulations Advisory –DEP.)*

SECTION XI DECISION PROCESS AND PERMIT

- 11.1** The Agency, or its duly authorized agent acting pursuant to Section 6 of these regulations, may grant the application as filed; grant it upon such terms, conditions, limitations or modifications necessary to carry out the purposes of the Act; or deny it. Such terms may include any reasonable measures which would mitigate the impacts of the regulated activity and which would (a) prevent or minimize pollution or other environmental damage, (b) maintain or enhance existing environmental quality, or (c) in the following order of priority: restore, enhance and create productive wetland or watercourse resources. Such terms may include restrictions as to the time of year in which a regulated activity may be conducted, provided the Agency, or its agent, determines that such restrictions are necessary to carry out these regulations and the policy of sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes. *(Last Sentence Added 12/10/12, Eff. 1/1/13, Pursuant to 2012 Legislation and Regulations Advisory –DEEP.)*
- 11.2** No later than sixty-five (65) days after receipt of an application, the Agency may hold a public hearing on such application. At such hearing any person or persons may appear and be heard and may be represented by an agent or an attorney. The hearing shall be completed within thirty-five (35) days of its commencement and action shall be taken on applications within thirty-five (35) days after completion of a public hearing. In the

absence of a public hearing, action shall be taken on applications within sixty-five (65) days from the date of receipt of the application.

The applicant may consent to one or more extensions of the periods specified in this subsection provided the total extension of all such periods shall not be for longer than sixty five (65) days or may withdraw such application. Failure of the Inland Wetlands Agency to act within any time period specified in this subsection, or any extension thereof, shall not be deemed to constitute approval of the application.

- 11.3** The Agency shall state upon its record the reasons and basis for its decision and, in the case of any public hearing, such decision shall be based fully on the record of such hearing and shall be in writing and shall as applicable and in accordance with section 10 of these regulations, incorporate a statement relative to the consideration of feasible and prudent alternatives.
- 11.4** The Agency shall notify the applicant and any person entitled to such notice of its decision within fifteen (15) days of the date of the decision by certified mail and the Agency shall cause notice of its order in the issuance or denial of the permit, in a newspaper having general circulation in the town wherein the inland wetland or watercourse lies. In any case in which such notice is not published within such fifteen day period, the applicant may provide for the publication of such notice within ten (10) days thereafter.
- 11.5** If an activity authorized by the inland wetland permit also involves an activity or project which requires zoning or subdivision approval, a special zoning permit, variance or special exception, a copy of the decision and report on the application shall be filed with the Town of Ellington Planning and Zoning Commission.
- 11.6** If the Agency denies the permit without prejudice or if it grants a permit with terms, conditions, limitations or modifications, the applicant may attempt to modify the proposal to the Agency's satisfaction. The Agency shall determine whether the proposed modification requires the filing of a new application. The rejection of a modified or corrected application by the Agency shall be equivalent to the denial of an application for the purposes of appeal.
- 11.7** Any permit issued by the Agency for the development of land for which an approval is required under CGS chapter 124, 124b, 126 or 126a shall be valid until the approval granted under such chapter expires or for ten years, whichever is earlier. Any permit issued by the agency for any activity for which an approval is not required under CGS chapter 124, 124b, 126 or 126a shall be valid for not less than two years and not more than five years. Permit renewal and extension shall be at the discretion of the Agency and may be subject to the calling of an additional public hearing. All permits shall expire upon the completion of the acts specified herein. Notwithstanding other provisions of these regulations, in allowing a regulated activity, the Commission may limit the duration of work necessary to complete a permitted activity, once the activity has been commenced in accordance with the permit. *(Amended 12/10/12, Eff. 1/1/13, Pursuant to 2012 Legislation and Regulations Advisory –DEEP.)*

11.7.1

Notwithstanding the provisions of Section 11.7 of these regulations, any permit issued by the Agency prior to July 1, 2011, that was in effect and did not expire prior to May 9,

2011, shall be valid for a period not less than nine years after the date of such approval.
(Amended 12/10/12, Eff. 1/1/13, Pursuant to 2012 Legislation and Regulations Advisory –DEEP.)

- 11.8** The Permittee shall notify the Agency of assignment, transfer, sublet or sale of a Permit. Permits may be recorded on the Ellington land Records at the discretion of the permittee.
- 11.9** If a bond or insurance is required in accordance with Section 12 of these regulations, no regulated activity shall commence until such bond or insurance has been provided to, reviewed and approved by, the Town Planner.
- 11.10** The following General Provisions shall apply to all permits:
- a.** In evaluating applications in which the Agency relied in whole or in part on information provided the applicant, if such information subsequently proves to be false, deceptive, incomplete or inaccurate, the permit may be modified, suspended or revoked.
 - b.** All permits issued by the Agency are subject to and do not derogate any present or future rights or powers of the Agency or the Town of Ellington, and are further subject to any and all public and private rights and to any federal, state, and municipal laws or regulations pertinent to the property or activity.
 - c.** If the activity authorized by the inland wetland permit also involves an activity or a project which requires zoning or subdivision approval, special permit, variance or special exception, no work pursuant to the wetland permit may begin until such approval is obtained.
 - d.** The permittee shall employ construction management practices, consistent with the terms and conditions of the permit, to control storm water discharges and to prevent erosion and sedimentation and to otherwise prevent pollution of wetlands and watercourses.

SECTION XII BOND AND INSURANCE

- 12.1** Upon approval of the application and prior to issuance of a permit, the applicant may, at the discretion of the Agency, be required to file a bond or other surety in a form approved by the Agency. Said surety may be required by the Agency or its agent in order to assure compliance with approved erosion control plans, for site stabilization, or for site mitigation.
- 12.2** The bond or surety shall be conditioned on compliance with all provisions of these regulations and the terms, conditions and limitations established in the permit.
- 12.3** The Agency may require the applicant to certify that it has public liability insurance against liability which might result from the proposed operation or use of the wetlands or watercourses covering any and all damage which might occur within two (2) years of completion of such operations, in an amount to be determined by the Agency commensurate with the regulated activity.
- 12.4** Release or reduction of any surety shall be at the sole authority of the Agency, upon receipt of a written request by the permittee, and following inspection, review and recommendations by the Town Planner, Town Engineer or other appropriate town staff.

SECTION XIII ENFORCEMENT

- 13.1** The Agency may appoint an agent or agents to act in its behalf with the authority to inspect property, except a private residence, and issue notices of violation or cease and desist orders and to carry out other actions or investigations necessary for the enforcement of these regulations.
- 13.2** The Agency or its agent may make regular inspections of all regulated activities for which permits have been issued under these regulations.
- 13.3** If the Agency or its duly authorized agent finds that any person is conducting or maintaining any activity, facility or condition which is in violation of the Act or these regulations, the Agency or its duly authorized agent may:
- a.** Issue a written order by certified mail, return receipt requested, to such person conducting such activity or maintaining such facility or condition to immediately cease such activity or to correct such facility or condition. Within ten (10) calendar days of the issuance of such order the agency shall hold a hearing to provide the person an opportunity to be heard and show cause why the order should not remain in effect. The Agency shall consider the facts presented at the hearing and within ten (10) calendar days of the completion of the hearing notify the person by certified mail that the original order remains in effect, that a revised order is in effect, or that the order has been withdrawn. The Agency shall publish notice of its decision in a newspaper having general circulation in the municipality. The original order shall be effective upon issuance and shall remain in effect until the agency affirms, revises or withdraws the order. The issuance of an order pursuant to this section shall not delay or bar an action pursuant to Section 22a-44(b) of the General Statutes, as amended.
 - b.** Issue a notice of violation to such person conducting such activity or maintaining such facility or condition, stating the nature of the violation, the jurisdiction of the Agency, and prescribing the necessary action and steps to correct the violation including, without limitation, halting work in wetlands or watercourses. The Agency may request that the individual appear at the next regularly scheduled meeting of the Agency to discuss the unauthorized activity, and/or provide a written reply to the notice or to file a proper application for the necessary permit. Failure to carry out the action(s) directed in a notice of violation may result in issuance of the order provided in Subsection A of this Section or other enforcement proceedings as provided by law.
- 13.4** The Agency may suspend or revoke a permit if it finds that the applicant has not complied with the terms, conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application including application plans. Prior to revoking any permit, the Agency shall issue notice to the permittee, personally or by certified mail, return receipt requested, setting forth the facts or conduct which warrants the intended action. At the public hearing the permittee shall be given an opportunity to show that it is in compliance with its permit and any and all requirements for retention of the permit.

- 13.5** The permittee shall be notified of the Agency's decision to suspend, revoke, or maintain a permit by personal service or certified mail within fifteen (15) days of the date of its decision.

SECTION XIV AMENDMENTS

- 14.1** These regulations and the Inland Wetlands and Watercourses Map for the Town of Ellington may be amended, from time to time, by the Agency in accordance with the Connecticut General Statutes.
- 14.2** An application filed with the Inland Wetlands and Watercourses Agency which is in conformance with these regulations as of the date of receipt shall not be required thereafter to comply with any change in the Inland Wetlands Regulations including changes to upland review area limits, taking effect on or after the date of such decision and any appeal from the decision of such Agency with respect to such application shall not be dismissed by the Superior Court on the grounds that such change has taken effect on or after the date of such receipt. The provisions of this subsection shall not be construed to apply:
- a.** To the establishment, amendment or change of boundaries of inland wetlands or watercourses, or
 - b.** To any change in regulations necessary to make such regulations consistent with the provisions of Chapter 440 of the General Statutes as of the date of such receipt.
- 14.3** These regulations and the Town of Ellington Inland Wetlands and Watercourses Map shall be amended in the manner specified in Section 22a-42a of the Connecticut General Statutes, as amended. The Agency shall provide the Commissioner of Energy and Environmental Protection with a copy of any proposed regulations and notice of the public hearing to consider any proposed regulations or amendments thereto, except determinations of boundaries, at least thirty-five days before the public hearing on their adoption.
- 14.4** Petitions requesting changes or amendments to the "Inland Wetlands and Watercourses Map, Ellington, Connecticut" shall contain at least the following information:
- a.** The applicant's name, address and telephone number;
 - b.** The owner's name (if not the applicant), address, telephone number, and a written consent to the proposed action set forth in the application;
 - c.** Applicant's interest in the land;
 - d.** The geographic location of the property involved in the petition including a description of the land in sufficient detail to allow identification of the disputed wetland or watercourse areas;
 - e.** The reasons for the requested action;
 - f.** The names and addresses of adjacent property owners; and
 - g.** A site plan showing proposed development of the property, where applicable.

- 14.5** The Inland Wetland and Watercourses Agency shall require the property owner to present documentation by a certified soil scientist regarding site soils. Such documentation shall include a map of the land in question signed by the certified soil scientist on which the flag locations defining the boundaries of the regulated soil types are depicted, along with their appropriate numerical designations at an accuracy of an A2 survey standard established by the State of Connecticut Board or Registry for Professional Engineers and Land Surveyors.
- 14.6** Watercourses shall be delineated by a competent soil scientist, geologist, ecologist or other individual satisfactory to the Agency or its Agent.
- 14.7** A public hearing shall be held on petitions to amend the Inland Wetland and Watercourses Map or regulations text. Notice of the hearing shall be published in a newspaper having a general circulation in the municipality where the land that is the subject of the hearing is located, at least twice at intervals of not less than two days, the first not more than fifteen days nor less than ten days, and the last not less than two days, before the date set for hearing. A copy of such proposed boundary or text change shall be filed in the office of the town clerk, for public inspection at least ten days before such hearing. All materials including maps and documents relating to the petition shall be open for public inspection.
- 14.8** Within sixty-five (65) days after receipt of a complete petition for a change in the mapped boundaries of any wetland or watercourse, or an amendment to the regulation text, the Agency shall hold a public hearing to consider the petition. The Agency shall complete the public hearing within thirty-five (35) days of its commencement. The Agency shall act upon the changes requested in such petition within sixty-five (65) days after completion of the hearing. At such hearing any person or persons may appear and be heard and may be represented by an agent or an attorney.
- The petitioner may consent to one or more extensions of any periods specified in this subsection provided the total extension of all such periods shall not be for longer than sixty-five (65) days, or may withdraw such petition. The failure of the Inland Wetlands and Watercourses Agency to act within any time period specified in this subsection, or any extension thereof, shall not be deemed to constitute approval of the petition.
- 14.9** The Agency shall state in writing the reasons why the change in the Inland Wetland and Watercourses Map and/or regulations was approved.

SECTION XV APPEALS

- 15.1** Appeal on actions of the Agency shall be made in accordance with the provisions of Section 22a-43 of the General Statutes, as amended.
- 15.2** Notice of such appeal shall be served upon the Agency and the Commissioner of Energy and Environmental Protection.

SECTION XVI CONFLICT AND SEVERANCE

- 16.1** If there is a conflict between provisions of these regulations, the provision which imposes the most stringent standards for the use of regulated areas shall govern. If there is a

conflict between the provisions of these regulations and any provisions of the Act, the provisions of the Act shall govern. The invalidity of any word, clause, sentence, section, part, subsection or provision of these regulations shall not nullify any other part of the regulations.

SECTION XVII OTHER PERMITS

- 17.1** Nothing in these regulations shall obviate the requirements for the applicant to obtain any other permits or licenses required by law or regulation by the Town of Ellington, State of Connecticut and the Government of the United States including any approval required by the Connecticut Department of Energy and Environmental Protection and the U.S. Army Corps of Engineers. Obtaining such permits or licenses is the sole responsibility of the applicant.

SECTION XVIII EFFECTIVE DATE OF REGULATIONS

- 18.1** These regulations including the Inland Wetlands and Watercourses Map were initially adopted on November 21, 1988.

**APPENDIX A
TOWN OF ELLINGTON INLAND WETLANDS AND
WATERCOURSES REGULATIONS
APPLICATION FEES**

- 1.1** Method of Payment. All fees required by these Regulations shall be submitted to the Agency by check, cash or money order payable to the Town of Ellington at the time the application is filed with the Agency.
- 1.2** No application shall be approved by the Agency unless the correct application fee is paid in full.
- 1.3** The application fee is not refundable. **Amounts below DO NOT include the required State fee.**
- 1.4** Fee Schedule. Application fees shall be based on the following schedule:

a. PERMITTED AND NONREGULATED USES - Section 4 of these regulations:

Permitted uses as of right (Section 4.1 a and b only)

0 to 5 acres of direct impact -----\$75.00

5 to 10 acres of direct impact-----\$150.00

10 acres and above of direct impact-----\$250.00

Nonregulated uses (Section 4.2 a and b)----- \$50.00

b. REGULATED USES - Section 6 of these regulations:

1. Administrative Permit (Section 6.4)-----\$50.00

2. Agency Permits:

Nonsignificant Activity-----\$250.00

*Significant Activity-----\$250.00 flat fee, plus;

\$5.00/lineal foot of watercourse directly affected, plus;

\$75.00 each new or modified watercourse crossing, plus;

\$25.00/acre upland review area not protected by easement; plus

an additional fee for inland wetland soils directly affected as follows:

1 to 500 square feet-----\$75.00

501 to 2,500 square feet-----\$150.00

2,501 to 10,000 square feet-----\$500.00

10,001 square feet and above-----\$750.00

*** Fees for significant activities located within a mapped watershed of a public water supply company are double the above requirements.**

c. Map and Regulation Amendments-----\$150.00

d. Regulations and Maps (non-digital paper copies):

Inland Wetland and Watercourse Regulations-----\$10.00

Inland Wetland and Watercourse Map-----\$20.00

e. The Agency may recover the costs of any expert retained by the Agency to offer an opinion, substantiate, or refute any subject related to an application for permit from the Applicant.